THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M. No.4071-C of 2006 &
R.S.A. No.1609 of 2006

Date of Decision: 5 - 9 - 2006

The Secretary, Department of Education, Government of Punjab and others **.....Appellant**

v.

Makhan Singh **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.G.C.Gupta, DAG, Punjab
for the appellant.

Mr.Surmukh Singh, Advocate
for the respondent.

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P.S.PATWALIA, J. (Oral)

C.M.No.4071-C of 2006

This is an application for condonation of 157 days delay in filing the appeal. For the reasons mentioned in the application, delay of 157 days in filing the appeal is condoned.

R.S.A.No.1609 of 2006

I have heard Mr.G.C.Gupta, learned Deputy Advocate General, Punjab for the appellants and Mr.Surmukh Singh, learned counsel appearing on behalf of the respondent.

The only contention raised by the learned Deputy Advocate General is that interest awarded at the rate of 18% per annum by the lower Appellate Court

is on the higher side. He, however, concedes that the State Government had not filed any appeal against the award of interest at the rate of 6% per annum by the trial Court. On the other hand, learned counsel for the respondents states that this is a case where admittedly the delay has occurred in releasing complete retiral benefits to the respondent. He states that this is a second suit filed by him. He earlier filed a suit where he had prayed for a direction to be issued to the appellants to complete his service book. In appeal the suit was decreed and a direction was issued to the appellants to complete the service book. Thereafter, he was compelled to file a second suit to get his complete retiral benefits. He further submits that there is absolutely no explanation or reason given by the State for the delay in payment of his retiral benefits. He also relies upon a judgment in **Punjab State and others v. Shaminder Singh**, 2006(1) PLR 499 where this Court relying on a judgment of the Hon'ble Supreme Court in **Vijay L. Mehrotra v. State of U.P. and others**, 2000(2) R.S.J. 647 has upheld grant of interest at the rate of 18% per annum under these circumstances. The relevant observations of this Court in **Shaminder Singh's case (supra)** are as hereunder:-

> "2. The only argument raised by learned State counsel that the interest awarded is on the higher side especially when the plaintiff-respondent is negligent in submitting his pension papers.
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> 3. Having heard the learned counsel, I am of the opinion that the view taken by the Supreme Court in *Vijay L. Mehrotra's case* (supra) has been rightly followed and no exception is provided for this Court to interfere in the discretion exercised in awarding the interest in the facts and circumstances of the present case. No question of law warranting interference of this Court in exercise of jurisdiction under Section 100 of the Code has been raised. The appeal is without merit and is liable to be dismissed.
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> 4. The argument that the plaintiff-respondent was negligent and himself has caused the delay cannot be accepted because there is no finding of either of the two Court below to that effect. On the contrary Rule 9.3 of the Punjab Civil Services

Volume II deals with the procedure for grant and finalisation of pension. These rules came up for consideration before a Division Bench of this Court in the case of *A.K.Kapoor v. State of Haryana and others*, 1992(1) R.S.J. 469. After citing Rules 9.1, 9.4, 9.5, 9.6, 9.7, 9.8 and 9.10 of the Rules, the Division Bench opined as under:-

> "A perusal of statutory Rules would leave no one in doubt that the Government being alive to the hardship that is likely to be caused in the delayed payment of post retiral benefits is no uncertain terms wants the matter to need urgent attention. It has been clearly enjoined upon the authorities to see that the Government servant begins to receive pension on the date it becomes due and, therefore, to deal with the cases of pension by giving high degree of priority to the same. Every Head of Department by virtue of statutory Rules has been directed to undertake the work of preparation of pension employee is due to retire on superannuation. The Head of Office is directed to divide the period of preparatory work of two years in the manner provided in Rule 9.5 and eight months prior to the date of retirement. The Head of Office has necessarily to obtain Form PEN 9 from the Government employee, duly completed. The Pension Sanctioning Authority has necessarily to forward to the Audit Officer Form PEN 9 and Form PEN 1 duly completed with a covering letter in Form PEN 16 alongwith the Service Book of the Government employee fully completed for the verification of his service. Any event which has bearing on the amount of pension admissible has necessarily to be brought to the notice to the Audit Officer promptly and such authority has thereafter to determine the qualifying years of service and the emoluments qualified for pension in accordance with the information available in the official record. After the amount of pension and gratuity have been determined, the Pension Sanctioning Authority has further to take action as enumerated in Rule 10(4). In the ultimate analysis, by way of statutory Rules, it has been settled that every case of delayed payment of gratuity shall, suo motu, be considered by the Administrative Department and where the Department is

satisfied that the delay in the payment of gratuity was caused on account of administrative lapse, the Department shall make a recommendation to the Administrative Department for the payment of interest. The Government perhaps could not be better than underlining the urgency of dealing with pension cases by framing statutory Rules and by issuing a mandate to the authorities to be very serious in the matter of pension. Perusal of pension Rules would, thus, leave no room for doubt that in case any pensionary benefit is delayed and for which delay there is no justifiable ground whatsoever, the employee would be entitled to interest. ....."

5. Similar observations have been made by the Supreme Court in the case of *Dr.Uma Agarwal v. State of U.P.*, (1999)3 S.C.C. 438. Therefore, there is no merit in the aforementioned contention raised by the learned State counsel and the same is hereby rejected."

After hearing learned counsel for the parties, I find absolutely no merit in the contention raised by the learned Deputy Advocate General. In the present case there is absolutely no justification in releasing the retiral benefits to the respondent. The case is in fact completely covered by the ratio of judgment in **Shaminder Singh's case (supra)**. The present regular second appeal is therefore dismissed.

(P.S.PATWALIA)
JUDGE

September 5, 2006.

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